

### **REMARKS/ARGUMENTS**

The Final Office Action of January 14, 2010, has been carefully reviewed. New claim 38 has been added. Claims 2-19, 21-23 and 25-38 are presently pending, with claims 16, 17, 18, 19, 21, 22 and 34-37 being the independent claims. Reconsideration is respectfully requested.

Support for new claim 38 can be found, for example, in paragraphs [0056], [0083] and [0089]-[0097] of the originally-filed application. No new matter is believed to have been added.

#### ***Examiner Interview***

Applicant thanks the Examiner for the courtesies extended to Applicant's representatives in the telephonic interview conducted on March 9, 2010, in which the rejection of independent claim 17 was discussed in light of cited references Pankaj (U. S. Patent No. 6,807,426) and Malmlof (U. S. Patent No. 6,594,241). During the interview, the meaning of the claim feature "transmitting, by an apparatus, a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested" recited in claim 17 was discussed. Applicant's representatives explained that, from the conditional term "if", this claim feature is understood to mean that the transmission of the request for a rate is conditioned on all three of the conditions recited in this claim feature being satisfied (i.e., data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested). In this regard, Applicant's representatives argued that neither Pankaj or Malmlof, alone or in combination, teaches conditioning the transmission of a request for a rate on all three of the above conditions being satisfied. The condition "data in the buffer exceeds a buffer depth" was discussed in light of Malmlof, which the Examiner cited as disclosing this condition. Applicant's representatives argued that Malmlof uses the amount of data in a transmission buffer as a condition for whether to transmit data on a dedicated channel or on a common channel, and not as a condition for whether to transmit a request for a rate. Accordingly, Applicant's representatives argued that it would not have been obvious, in view of Malmlof, to use data in a buffer exceeding a buffer depth as one of the conditions for whether to transmit a request for a rate. The Examiner indicated that she would take another look at Malmlof in light of this discussion. During the interview, the Examiner suggested amending claim 17 to tie the "scheduled duration" recited in claim 17 to one of conditions for transmitting a request for a rate. Applicant believes that claim 17 is allowable as it stands for reasons given

below, and has instead added new claim 38, which recites the additional feature “wherein the request for the rate includes an estimate of an amount of data in the buffer, and the scheduled duration in the rate assignment is based on the estimate of the amount of data in the buffer.”

***Claim Rejections – 35 USC § 103***

Claims 17, 19 and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Pankaj (U. S. Patent No. 6,807,426) in view of Malmlof (U. S. Patent No. 6,594,241). Claims 2-15, 35 and 37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Pankaj and Malmlof as applied to claims 17, 19 and 21 above, and further in view of Chen (U.S. Patent Application Publication No. 2003/007466). Reconsideration and withdrawal of these rejections are respectfully requested.

Claim 17 is directed to a method of transmitting data. The method comprises transmitting, by an apparatus, a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, receiving, by the apparatus, a rate assignment responsive to the request for the rate, the rate assignment indicating a scheduled duration and a scheduled rate applicable for the scheduled duration, and transmitting data, the transmitting responsive to the rate assignment, wherein the data is transmitted for the scheduled duration at the scheduled rate. Applicant submits that Pankaj and Malmlof, taken alone or in combination, fail to disclose the feature of transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, as recited in claim 17.

Pankaj is not seen to disclose the access terminal 122 conditioning the transmission of its data request on all three of the conditions recited in claim 17 being satisfied (i.e., data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested). Therefore, Pankaj is not seen to disclose the feature of transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, as recited in claim 17.

The Office Action cited col. 6, lines 19-20 and col. 6, line 32 of Pankaj as allegedly disclosing transmitting a request for a rate if data arrives in a buffer and data in the buffer exceeds a buffer depth. See page 5 of the Office Action. Applicant respectfully disagrees. Col. 6, lines 16-21 of Pankaj discloses “[t]he channel scheduler 812 determines the length of a service

interval during which data is to be transmitted to any particular remote station based upon the remote station's associated instantaneous rate for receiving data (as indicated in the most recently received DRC signal)." This portion of Pankaj does not mention a buffer. Col. 6, lines 32-33 of Pankaj discloses that the "channel scheduler 812 selects the particular data queue for transmission." The data queue in this portion of Pankaj refers to the data queue 830 of the base station 820, not the remote station, as indicated by the immediately following sentence in col. 6, lines 33-35 and Figure 7. The data queue 830 stores data for transmission to the remote station associated with the data queue 830. See col. 6, lines 33-36. Pankaj does not disclose the access terminal 126 using the amount of data in the data queue 830 of the base station 820 as a condition for whether to transmit its data request.

Therefore, Pankaj is not seen to disclose the feature of transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, as recited in claim 17. Malmlof is not seen to cure the above deficiencies of Pankaj for at least the reasons given below.

Malmlof discloses a system for controlling switching between different channel types. See col. 1, lines 14-26 of Malmlof. Malmlof also discloses determining when to switch a user connection from a dedicated channel to a common channel by monitoring the amount of data in a transmission buffer associated with the user connection. See col. 2, lines 58-61 of Malmlof. Thus, Malmlof uses the amount of data in the transmission buffer as a condition for whether to transmit data on the dedicated channel or on the common channel.

The Office Action cited col. 2, lines 59-61 of Malmlof as disclosing "the data in the buffer exceeds a buffer depth." See page 6 of Office Action. As discussed above, Malmlof uses the amount of data in the transmission buffer as a condition for whether to transmit data on the dedicated channel or on the common channel. Malmlof does not teach or suggest using the amount of data in the transmission buffer as a condition for whether to transmit a request for a rate. Therefore, Applicant submits that it would not have been obvious to combine Pankaj and Malmlof to arrive at the feature of transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, as recited in claim 17.

For at least the reasons given above, Applicant submits that independent claim 17 is allowable over the applied applications, and respectfully request that the rejection of claim 17 be withdrawn.

Independent claims 19, 21, 35 and 37, which include features similar to those of claim 17, are also allowable over the applied references for at least the reasons given above for claim 17.

The other rejected claims currently under consideration in the application are dependent from the independent claims discussed above and therefore are believed to be allowable over the applied references for at least the same reasons. Because each dependent claim is deemed to define an additional aspect of the invention, however, the individual consideration of each on its own merits is respectfully requested.

#### *New Claim*

New claim 38 depends from independent claim 17, and is therefore allowable for at least the reasons given above for claim 17. New claim 38 is allowable for the additional reason that none of the applied references, either alone or in combination, teaches the additional feature “wherein the request for the rate includes an estimate of an amount of data in the buffer, and the scheduled duration in the rate assignment is based on the estimate of the amount of data in the buffer” recited in new claim 38.

#### *Allowable Subject Matter*

Applicant greatly appreciates the Examiner’s indication that claims 16, 18, 22, 34 and 36 are allowed.

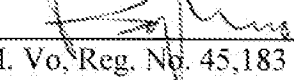
### CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: March 11, 2010

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